9-3-2008

State v. Finnicum Appellant's Brief Dckt. 34087

IN THE SUPREME COURT OF THE STATE OF IDAHO

STATE OF IDAHO,	)	
	)	
Plaintiff-Appellant,	)	NO. 34087
	)	
vs.	)	
	)	
PEGGY JEAN FINNICUM,	)	
	)	
Defendant-Respondent.	)	
	)	

BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF KOOTENAI

HONORABLE JOHN L. LUSTER, District Judge
HONORABLE PENNY FRIEDLANDER, Magistrate Judge

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STATEMENT OF THE CASE

Nature Of The Case

The state appeals from the district court's order reversing the magistrate's denial of Finnicum's motion to suppress.

Statement Of Facts And Course Of Proceedings

After Finnicum was arrested for driving under the influence and tests established that her BAC was .26/.25, the state charged Finnicum with driving under the influence, enhanced for an excessive blood alcohol content. (R., p.5; Plaintiff's Exhibit 1, "Page 3 of 3".) Finnicum filed a motion to suppress, specifically contending that law enforcement "had unlawfully entered her home to seize her during the course of their investigation." (R., pp.17-20, 55; Supp. Hrg. Tr., p.1, Ls.13-18, p.3, Ls.15-17.)

At the suppression hearing, the parties stipulated to the facts as reflected in the report of the arresting officer, Deputy McFarland, supplemented with the testimony of the backup officer, Deputy Vrevich (R., pp.23, 56-57; Supp. Hrg. Tr., p.1, Ls.13-22, p.3, Ls.18-22, p.27, Ls.16-20). Deputy McFarland reported the following:

> On 9/25/05 at approx. 1756 hours I along with (M) Dep. Vrevich [was] dispatched to respond to a possible domestic dispute at 18363 W. Riverview Dr. While en route to the call Dispatch notified us that the female half had left the scene driving a white Chevy Blazer and was possibly intoxicated. Dep. Vrevich was checking the area and also advised Post Falls of a possible intoxicated driver. I arrived on scene at approx. 1810 hours [where] I met, (W/RP) Arthur M. Finnicum. Arthur and his girlfriend were waiting at the top of his driveway on Riverview Rd. to speak with me reference the possible domestic dispute.

> Arthur said that he and his mother, (S) Peggy J. Finnicum got into a verbal argument earlier that evening because Arthur believed that she needed to stop drinking. Arthur said that Peggy got upset and said, "Fuck you!" repeatedly. Arthur said he did not know what to do so he called his father for advice. Arthur said his father told him to call the police. Arthur said when he called the police Peggy left the house driving her white Chevy Blazer. Arthur said that Peggy had been drinking alcoholic beverages all day and he believed that she was highly intoxicated.
>
> While I was speaking to Arthur at approx. 1821 hours, I saw Peggy drive up in her white Chevy Blazer traveling eastbound on Riverview Dr. I flagged Peggy down and told her to pull into the driveway so I could speak to her. While I was speaking to her I could smell the strong odor of an alcoholic beverage on her breath. I advised her to drive down the driveway in a safe area so I could do some further investigation. Peggy was slurring her speech, had glassy and bloodshot eyes, and seemed confused.
>
> I asked Peggy to step out of the vehicle. Peggy stepped out of the vehicle. I told Peggy to stay by her car so I could speak to Arthur. Peggy continued to say, "What are you doing here[?]" I advised Peggy that I was here to investigate a domestic dispute between her and her son, Arthur. I also advised Peggy that she appeared to be intoxicated and she was driving her vehicle on a public roadway.
>
> While I was speaking to Arthur, Peggy went into the house. Dep. Vrevich arrived on scene to assist me in my investigation. I advised Dep. Vrevich that Peggy went into the house when she was told to stay outside. Dep. Vrevich and I entered the house through the front door to reestablish contact with Peggy.
>
> Peggy said that she did not know what was going on and she said she did not know what was wrong with her driving her vehicle after she had a couple of drinks. Peggy said that she went to the Stateline to buy a pack of cigarettes and came back home. I told Peggy that I believed that she was intoxicated and that I would need to so dome Standardized Field Sobriety Tests on her. Peggy agreed and I conducted the following tests on a level gravel driveway outside of Peggy's home.

(Plaintiff's Exhibit 1, "Page 2 of 3"; Supp. Hrg. Tr., p.27, L.21 – p.30, L.19.) After she performed poorly on the field sobriety tests, Finnicum was arrested. (Plaintiff's Exhibit 1, "Page 3 of 3".)

The magistrate denied Finnicum's motion to suppress and her subsequent motion for reconsideration. (R., pp.32, 35-36, 41, 112-116; Supp. Hrg. Tr., p.32, L.10 – p.33, L.19.) When denying Finnicum's motion to suppress, the magistrate specifically found a detention had been effected when Deputy McFarland told Finnicum to stay by her car so he could investigate the domestic and the DUI, and, relying on State v. Maland, 140 Idaho 817, 103 P.3d 430 (2004), found Finnicum was not protected by the Fourth Amendment when she attempted to defeat the purpose of the lawful detention by entering her house after the detention had been initiated. (Supp. Hrg. Tr., p.32, L.10 – p.33, L.17.) Upon denying Finnicum's motion to reconsider, the magistrate found, as an alternative basis for its denial of Finnicum's motion to suppress, that the officers also possessed probable cause to arrest Finnicum for DUI, and entered her home under the exigent circumstances exception. (R., pp.41, 59-60, 65-71, 102-103, 105-109, 119-120.)

Finnicum entered a conditional guilty plea, by which she reserved her right to appeal the denial of her motion to suppress. (R., pp.41-46.) The magistrate entered judgment and placed Finnicum on probation for a term of two years. (R., pp.47-48.) Finnicum timely appealed, and the magistrate granted her motion to have her sentence stayed pending her appeal. (R., pp.49-54.)

The district court reversed the magistrate's order denying Finnicum's motion to suppress. (R., pp.117-120; App. Hrg., p.28, L.1 – p.38. L.21.) In so ordering, the district court first found "I clearly think *Maland* stands for the proposition that the *Terry* investigation once commenced outside the home

cannot pursue a suspect into the home to complete that *Terry* investigation." (App. Hrg., p.29, L.11 – p.30, L.17.) The district court also ruled that, while the totality of the circumstances known to the officers before Finnicum entered the house gave them probable cause to arrest Finnicum for DUI, because the officers did not testify that they entered Finnicum's house specifically to retrieve her to prevent the destruction of her BAC evidence, the exigent circumstances exception could not apply. (R., pp.119-120; App. Hrg. Tr., p.30, L.18 – p.38, L.17.) The state timely appealed. (R., pp.121-124.)

ISSUE

Did the district court err when it reversed the magistrate's order denying Finnicum's motion to suppress?

ARGUMENT

The District Court Committed Error When It Did Not Affirm The Magistrate's Denial Of Finnicum's Motion To Suppress

A. Introduction

The district court reversed the magistrate's order denying Finnicum's motion to suppress, finding 1) the entry of Finnicum's home by the officers unlawful even though they initiated the detention outside of Finnicum's home and entered only when Finnicum decided to ignore Deputy McFarland's lawful order to remain with her car while he completed his investigation and 2) the officers possessed probable cause to believe Finnicum had driven under the influence but that the officers were required to specifically articulate that they entered the home to prevent the destruction of the BAC evidence before the exigent circumstances exception could apply. Because Idaho law is clear that an individual may not defeat the purpose of a lawful detention by escaping into their home, the district court's order must be reversed. Further, Idaho case law is clear that the evanescent nature of BAC evidence warrants the application of the exigent circumstances exception, and nothing in Idaho law requires an officer to testify that he held a subjective fear that the BAC evidence would dissipate before the exception may apply. Finally, because the officers possessed probable cause to believe Finnicum had committed the crime of driving under the influence, they were entitled, under the hot pursuit exception, to follow Finnicum into her home when she tried to escape her detention. The magistrate's legal conclusions, flowing logically from the uncontested facts, should have been affirmed by the district court.

B. Standard Of Review

On review of a decision rendered by a district court in its intermediate appellate capacity, the reviewing court "directly review[s] the district court's decision." State v. DeWitt, 145 Idaho 709, ___, 184 P.3d 215, 218 (Ct. App. 2008) (*citing* Losser v. Bradstreet, 145 Idaho 670, ___ 183 P.3d 758, 760 (2008)). "Thus, we consider here whether the district court committed error with respect to the issues presented." In re Daniel W., __ Idaho __, 183 P.3d 765 (2008).

C. The Magistrate Correctly Found That Deputy McFarland Acted Within His Authority In Following Finnicum Into Her House To Resume The *Terry* Stop The Officer Had Already Initiated And Effected In A Public Place

Contrary to the finding of the district court, State v. Maland, 140 Idaho 817, 103 P.3d 430 (2004), does not stand for the proposition that a suspect whom officers have detained outside her house may avoid that detention by fleeing into her home. The magistrate correctly applied the holding in Maland, finding that it did not prohibit the actions of the deputies in this case. The district court should have affirmed the magistrate's denial of Finnicum's motion to suppress.

In State v. Maland, 140 Idaho 817, 824, 103 P.3d 430, 437 (2004), this Court held that "[a] *Terry* stop may not be effectuated by a warrantless, nonconsensual entry into a residence or place of business without probable cause for a felony and exigent circumstances." Relying on Maland, the district court concluded that even where an officer has initiated and effected a lawful

Terry stop in a public place, the person detained may escape from the officer and flee into a house and the officer is powerless to pursue the detainee. (App. Hrg. Tr., p.30, Ls.14-17.) Contrary to the district court's opinion, however, this result, which virtually invites suspects to defy lawful police authority, is neither supported nor compelled by the result reached in Maland.

In Maland, officers were dispatched to a residence in response to a noise complaint. Maland, 140 Idaho at 818, 103 P.3d at 431. The officers knocked on the door and Maland answered. Id. The officers asked Maland to produce identification and to disclose whether he owned the home. Id. at 819, 103 P.3d at 432. Maland claimed that he had no identification and gave the officers a false name. Id. The officers were suspicious that Maland was not being truthful and, when Maland attempted to terminate the encounter by closing the door, one of the officers blocked the door by putting her foot between the door and the doorjamb, and both officers pushed against the door. Id. Maland relented, came out of the house and revealed his true identity. Id. He was subsequently arrested on an outstanding bench warrant. Id.

This Court reversed Maland's conviction, holding that officers violated Maland's Fourth Amendment right to be free from unreasonable governmental intrusion when they crossed the threshold of Maland's residence to effectuate a Terry stop. Id. at 819-823, 103 P.3d at 432-36. In reaching this conclusion, the Court found it significant that the officers' first show of authority occurred simultaneously with their entry into Maland's residence. Id. at 820-22, 103 P.3d at 433-35. The Court also concluded that, unlike the defendant in United States

v. Santana, 427 U.S. 38, 42 (1976), Maland was in a private place when police encountered him because, in contrast to Santana who exposed herself to public view voluntarily, Maland only opened the door in response to the officers' knock. Id. at 822-23, 103 P.3d at 435-36. Concluding that Santana did not sanction the entry into Maland's home, the Court overruled its prior decisions in State v. Manthei, 103 Idaho 237, 939 P.2d 556 (1997), and State v. Hinson, 132 Idaho 110, 967 P.2d 724 (1998), and held that law enforcement officers may not enter a home to effectuate a Terry stop in the absence of probable cause for an arrest, exigent circumstances or consent. Maland, 140 Idaho at 823, 103 P.3d at 436.

Contrary to the district court's determination in this case, and consistent with the magistrate's determination, Maland does not stand for the broad proposition that a Terry stop never justifies a warrantless entry into a suspect's residence. Maland and the cases it overruled all involved situations where the police initiated the Terry stop while the defendant was in a private place, i.e. standing in or near an open doorway in response to the officer's knock. In this case, however, the officer initiated (and effected) the *Terry* stop while Finnicum was on the roadway and in her driveway, places where Finnicum clearly had no reasonable expectation of privacy. *See* Santana, 427 U.S. at 42. In such a situation, there is no rational basis to distinguish between the entry into a home to complete a probable cause-based arrest initiated in a public place, which the Supreme Court approved in Santana, and the entry into the home to complete a *Terry* stop that was initiated and even effected in a public place but from which the defendant fled. In such a stop, as in an arrest, "the officer communicates to

the detainee, either orally or through a show of force or authority, that he is not free to go about his business." State v. Zubizareta, 122 Idaho 823, 827, 839 P.2d 1237, 1241 (Ct. App. 1992). "Any investigative stop necessarily involves a brief period of detention." Consequently, "[a] suspect cannot defeat the purpose of a stop simply by walking away from it." State v. Cook, 106 Idaho 209, 220, 677 P.2d 522, 533 (Ct. App. 1984) (Burnett, J., and Walters, C.J., concurring).

The district court's decision to expand the holding of Maland to preclude officers from entering a home to continue a lawful investigative stop when the stop is initiated and effected in a public place but the suspect flees inside the home before the investigation can be completed is contrary to the decisions of several other courts that have addressed this question. *See, e.g.*, Alto v. City of Chicago, 863 F.Supp. 658, 661-62 (N.D. Ill. 1994) ("an officer who stops a person because of a reasonable, articulable suspicion of criminal activity need not terminate the stop merely because the suspect flees to his home") (citations omitted); Harbin v. City of Alexandria, 712 F.Supp. 67, 71-72 (E.D. Va. 1989) (*Terry* stop need not end when suspect walks from porch into house), aff'd 908 F.2d 967 (4th Cir. 1990) (unpublished); State v. Nikola, 821 A.2d 110 (N.J. Super. Ct. App. Div. 2003) (officer permitted to follow defendant into garage to continue lawful investigative detention initiated in defendant's driveway); People v. Riviera, 598 N.E.2d 423, 427 (Ill. App. 2d 1992) (police may make a warrantless entry into a private premises for the purpose of effectuating a *Terry* stop provided the police have a lawful basis to stop a suspect in a public place and the suspect reacts by suddenly fleeing to a private sanctuary, thereby

thwarting any opportunity to conduct the detention at a public location); Edwards v. United States, 364 A.2d 1209, 1214 (D.C. 1976) (officers did not violate Fourth Amendment by following suspects into apartment to complete *Terry* stop initiated on the street), aff'd on alternative grounds on reh'g, 379 A.2d 976 (D.C. 1977). Relying on Santana, these courts recognize, generally, that once an officer attempts in a public place to validly detain a suspect on reasonable suspicion of criminal activity, the suspect cannot thwart the lawful police action by simply retreating to a private place.

There is nothing in the Maland decision that dictates the result reached by the district court in this case. The magistrate correctly applied the law to the stipulated facts – that Finnicum was detained outside her home when she submitted to Deputy McFarland's order that she remain by her car and that officers followed her into her home after she later retreated into her home – and determined that Finnicum could not defeat the purpose of the lawful *Terry* stop by escaping into her house. Because the *Terry* stop in this case was initiated outside Finnicum's residence, Maland is inapplicable. The district court committed error when it reversed the magistrate's correct application of the law to the facts.

D. It Is Well-Established That The Exigent Circumstances Exception Applies Where Officers Have Probable Cause To Believe A Suspect Has Been Driving Under The Influence

In response to Finnicum's motion to reconsider her motion to suppress, the magistrate reiterated its earlier basis for denying the motion and further articulated an alternative basis for denying Finnicum's motion to suppress: the

officers' warrantless entry was justified by exigent circumstances because they had probable cause to arrest Finnicum for DUI. (R., pp.41, 59-60, 65-71, 102-103, 105-109, 119-120.) The district court reversed the magistrate's denial of Finnicum's motion to suppress on this basis also. The district court did so on the basis of its belief that, despite the magistrate's finding that the deputies had probable cause to arrest Finnicum for DUI before she escaped into her home, the deputies were also required to testify that they had a subjective fear that the BAC evidence would dissipate if they took the time to obtain a warrant to enter Finnicum's home to re-seize her before the exigent circumstances exception will apply. (R., pp.119-120; App. Hrg. Tr., p.34, Ls.21-23, p.36, L.15 – p.38, L.17.) The district court committed error when it reversed the magistrate's correct ruling, because the exigent circumstances exception to alcohol-content evidence is applied according to an objective standard, and does not depend on the subjective beliefs or fears of the officer.

The seminal case recognizing this particular exigency is Schmerber v. California, 384 U.S. 757 (1966), in which the facts set forth by the court did not include any testimony by the officer about any subjective fear that the evidence would dissipate if he had to obtain a warrant for a blood draw while investigating a DUI. After finding that the intrusion of a blood draw to determine BAC was protected by the Fourth Amendment, the Court concluded that the exigent circumstances exception applied to alcohol-content evidence based on its application of an objective view of the circumstances, rather than any motivation articulated by the officer:

> The officer in the present case, however, might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence.' We are told that the percentage of alcohol in the blood begins to diminish shortly after drinking stops, as the body functions to eliminate it from the system. Particularly in a case such as this, where time had to be taken to bring the accused to a hospital and to investigate the scene of the accident, there was no time to seek out a magistrate and secure a warrant. Given these special facts, we conclude that the attempt to secure evidence of blood-alcohol content in this case was an appropriate incident to petitioner's arrest.

Schmerber, 384 U.S. at 770-771 (citations removed) (emphasis supplied).

Likewise, the Idaho cases discussing the evanescent nature of alcohol-content evidence apply the exigent circumstances exception according to an objective standard, without reference to officer testimony. Indeed, the Idaho Supreme Court has referred to this as "an inherent exigency." State v. Woolery, 116 Idaho 368, 370, 775 P.2d 1210, 1212 (1989). Citing Woolery, the Court of Appeals emphasized the widespread acceptance of the application of the exigent circumstances exception to this evidence:

> The exigent circumstances exception allows agents of the State to conduct a warrantless search when there is a "compelling need for official action and no time to secure a warrant." *Michigan v. Tyler*, 436 U.S. 499, 509, 98 S.Ct. 1942, 1949, 56 L.Ed.2d 486, 498 (1978); *State v. Wren*, 115 Idaho 618, 624, 768 P.2d 1351, 1357 (Ct.App.1989). It is well established that blood draws to test for alcohol concentration fall within this exigency exception because blood alcohol content diminishes over time, and valuable evidence would be lost in the time required to obtain a warrant. *Schmerber*, 384 U.S. at 770-71, 86 S.Ct. at 1835-36, 16 L.Ed.2d at 919-20; *State v. Woolery*, 116 Idaho 368, 370, 775 P.2d 1210, 1212 (1989); *State v. Cooper*, 136 Idaho 697, 700-01, 39 P.3d 637, 640-41 (Ct.App.2001); *Curtis*, 106 Idaho at 489, 680 P.2d at 1389.

State v. Worthington, 138 Idaho 470, 472, 65 P.3d 211, 213 (Ct. App. 2002) (emphasis supplied). *See also* State v. Robinson, 144 Idaho 496, 163 P.3d 1208

(Ct. App. 2007) (court applied "objective standard" and found, given the specific, articulable facts reasonably indicating imminent destruction of evidence, that exigent circumstances justified officers' immediate entry into home to effect arrest of person whom they had probable cause to believe had just committed DUI and who refused to allow come outside for field sobriety tests or to allow officers into her home to perform the tests).

The district court reversed the magistrate's correct ruling based on its incorrect belief that application of the exigent circumstances exception required the officers to testify to their subjective fear that the alcohol-content evidence might dissipate. The district court should have affirmed the magistrate's correct ruling on this basis. Its order reversing the magistrate on this basis was error.

E. The Hot Pursuit Exception To The Warrant Requirement Authorized The Officers' To Follow Finnicum When She Retreated Into Her Home

The district court correctly found that the magistrate court was correct when it found the officers possessed probable cause to believe Finnicum had committed the crime of driving under the influence before she entered her house after having been told by Deputy McFarland to remain by her car in the driveway. (App. Hrg. Tr., p.34, Ls.21-23, p.38, Ls.13-14.) Because the officers had probable cause to believe Finnicum had committed DUI and had communicated to Finnicum that she was no longer free to choose to terminate her encounter with law enforcement, they were authorized to follow her into her home under the hot pursuit exception to the warrant requirement. The district court should have upheld the magistrate's order suppressing evidence on this alternative basis.

See State v. Morris, 119 Idaho 848, 850, 807 P.2d 1286, 1288 (Ct. App. 1991) (on appellate review, the lower court's ruling must be upheld if it is capable of being upheld on any theory); State v. Hammersley, 134 Idaho 816, 818, 10 P.3d 1285, 1287 (2000), overruled on other grounds by State v. Poe, 139 Idaho 885, 88 P.3d 704 (2004) (appellate court gives due consideration, but not deference, to the district court's appellate determination).

Having probable cause to believe that Finnicum had just driven while under the influence, Deputy McFarland was entitled to arrest Finnicum without a warrant. Finnicum attempted to thwart an arrest by retreating to her house. Finnicum could not do so, however, because the arrest had been set in motion in a public place. State v. Wren, 115 Idaho 618, 768 P.2d 1351 (Ct. App. 1989) (police in whose presence a nonviolent misdemeanor has occurred may pursue offender into his home and arrest him there without a warrant if the pursuit is triggered by flight from a lawful arrest outside the home).

As explained by the Idaho Court of Appeals in Wren:

> An arrest occurs when it is communicated, not when the officer decides to take such action. No particular acts, words or formulaic expressions are required; however, the communication must be sufficient to inform a reasonable person that he is no longer free to choose between terminating or continuing his encounter with the law enforcement officers.

Wren, 115 Idaho at 626 n. 8, 768 P.2d at 1359 n.8 (citations omitted). Thus, in United States v. Santana, 427 U.S. 38, 42 (1976), the United States Supreme Court held that Santana's arrest had been set in motion in a "public" place (i.e., Santana's doorway) when officers, having probable cause to arrest,

did no more than display their identification and shout, "police." Santana, 427 U.S. at 43.

In this case, Deputy McFarland clearly conveyed to Finnicum that she was no longer free to choose between terminating or continuing her encounter with the law enforcement officers. Deputy McFarland Told Finnicum that he was investigating the domestic dispute, that she appeared intoxicated and had just driven her car on a public roadway, and, most importantly, told her to stay by her car while he spoke to her son, the person reporting both the domestic dispute and Finnicum's DUI. (Plaintiff's Exhibit 1, "page 2 of 3".) Under these circumstances, no reasonable person would believe that she was "free to choose *between terminating or continuing* [her] encounter" with the police. Wren, 115 Idaho at 626 n. 8, 768 P.2d at 1359 n. 8; *see also* State v. Jenkins, 143 Idaho 918, 922, 155 P.3d 1157, 1161 (2007) (when officers turned on overhead lights while Jenkins was still in his car in his driveway, they acted on probable cause to arrest in a public place, regardless of whether they articulated this exact purpose).

Because Deputy McFarland had probable cause to arrest Finnicum, and because he communicated to Finnicum in a public place that she was not free to terminate the police encounter, Finnicum could not escape the otherwise lawful arrest by retreating to his garage. The order of the magistrate denying Finnicum's motion to suppress can also be upheld on this basis. Morris, 119 Idaho at 850, 807 P.2d at 1288 (on appellate review, the lower court's ruling must be upheld if it is capable of being upheld on any theory); Hammersley, 134 Idaho

at 818, 10 P.3d at 1287 (appellate court gives due consideration, but not deference, to the district court's appellate determination).

CONCLUSION

The state respectfully asks this Court to reverse the district court's order reversing the magistrate's order denying Finnicum's motion to suppress.

DATED this 2nd day of September, 2008.

Rebekah A. Cudé
Deputy Attorney General

CERTIFICATE OF MAILING

I HEREBY CERTIFY that on this 2nd day of September, 2008, I caused two true and correct copies of the foregoing BRIEF OF RESPONDENT to be placed in the United States mail, postage prepaid, addressed to:

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RAC/pm